

MAR 17 2008

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY DWYER, ACTING CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CRYSTAL GOPHER,

Defendant - Appellant.

No. 07-30358

D.C. No. CR-06-02165-FVS

MEMORANDUM *

Appeal from the United States District Court
for the Eastern District of Washington
Fred L. Van Sickle, Chief District Judge, Presiding

Submitted March 10, 2008 **

Before: T.G. NELSON, TASHIMA and BYBEE, Circuit Judges.

Appellant Crystal Gopher challenges her sentence of eighteen months imposed upon revocation of supervised release. She contends that 18 U.S.C

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

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§ 3583(e) and Federal Rule of Criminal Procedure 32.1(b)(2) are unconstitutional because they permit punishment for a supervised release violation without a jury verdict in violation of the Sixth Amendment holdings in *United States v. Booker*, 543 U.S. 220 (2005) and *Apprendi v. New Jersey*, 530 U.S. 466 (2000). However, we rejected these arguments in *United States v. Huerta-Pimental*, 445 F.3d 1220, 1225 (9th Cir. 2006), *cert. denied*, 127 S. Ct. 545 (2006). Accordingly, the government's unopposed motion for summary affirmance of the district court's judgment is granted.

AFFIRMED.